FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 321/2007
(Vishvasrao Panjabrao Wankhede & another **VERSUS** Indu wd/o Pundlik Wankhede & another **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Muley, Advocate for the appellant.
Shri Deshmukh, Advocate for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 9th AUGUST, 2007.

Heard the learned counsel for the parties.

The appellants are the original defendants. A suit was filed by the plaintiff for partition and separate possession for his half share in the suit property. The property was initially owned by one Zapruji. Zapruji had three sons viz. Punjabrao, Sonba and Bapurao. It is not disputed that Sonba separated from his other brothers some 50 years back. Bapurao had no issues. Punjabrao had four issues, the defendant nos.1, 2 & 3 and the plaintiff Pundlik. Plaintiff Pundlik was given in adoption to Bapurao, the third son of Zapruji in the year 1952. It is on the basis of this adoption that Pundlik claimed half share in the suit properties as Sonba was separated 50 years back. According to the plaintiff, the three sons of Punjabrao were entitled to

take half of the entire properties and Pundlik being the only son of Bapurao was entitled to the other half.

The defendants denied the claim of the plaintiff and claimed that the partition was effected between Punjabrao and Bapurao in the year 1969-70. The defendants pleaded that the partition was reduced into writing and the partition deed were executed by all the parties and the defendants as well as the plaintiffs were placed in possession of separate properties which fell to their share in view of the partition which was effected in the year 1969-70. The defendants, therefore, sought for dismissal of the suit in view of the partition which was already effected.

Both the Courts, however, held that the defendants had failed to prove that there was a partition in the joint family properties in the year 1969-70 and the parties were put in possession of the properties which fell to their respective share. In view of the adoption of the plaintiff to Bapurao in the year 1955, the Courts decreed the suit of the plaintiff by holding that the plaintiff was entitled to half share in

the suit properties described in the schedule A to C.

Shri Muley, the learned counsel for the appellants, submitted that the Courts committed a serious error in discarding the documents at Exh.137 and 138 which were in the form of partition deeds. The same were signed by all the four parties and the parties were put in possession of their separate shares after the deeds were executed. The counsel for the appellant further submitted that the partition deeds, though they were unregistered, could have been used for collateral purpose and the Courts were not justified in discarding the same only on the ground that they were unregistered documents and were inadmissible in evidence.

The counsel for the appellant relied on the judgment reported in **AIR 1976 SC 807** to substantiate the aforesaid submission.

The learned counsel for the respondents, however, supported the judgments passed by both the Courts.

It is not in dispute that the partition deeds at Exh.137 and Exh.138 are unregistered documents. No fault can be found with the findings recorded by both the Courts and for discarding the two documents which were unregistered. The Courts had further considered the fact that though the defendants had claimed that there was a partition of the joint family properties in the year 1969-70, the mutation entries were not changed till the year 1987. It is conspicuous to note that the suit was filed immediately thereafter in the year 1988. The submission made on behalf of the appellant that an unregistered partition deed could be used for collateral purpose, cannot be accepted in this case as the defendants were denying the claim of the plaintiffs in the instant suit only on the ground that there was partition of the joint family properties and the same was effected in the year 1969-70. In view of the aforesaid pleading, it cannot be said that the defendant was trying to seek the help of Exh.137 and Exh.138 for some collateral purpose. The defendants in this case were claiming that there was a partition in

the family and since they based their claim on Exh.137 and Exh.138 i.e. the partition deeds, the Courts rightly discarded the two documents and further the claim of the defendants that there was partition of the joint family properties in the year 1969-70, as those documents were not registered when they were compulsorily registrable under the Act.

The judgment reported in **AIR 1976 SC 807** would also not come to the help of the present appellants as the case is clearly distinguishable on facts. The reported case deals with a case where the parties had relied on a deed which was a deed of family arrangement and not a partition.

For the aforesaid reasons, the second appeal is dismissed with no order as to costs.

JUDGE

APTE